

MISS MAME E. HOWELL

MAY 20, 1958.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the
following

REPORT

[To accompany H. R. 8088]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8088) for the relief of Miss Mame E. Howell, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is that the designation on April 2, 1940, by Lucy Howell Netherton, deceased, former employee of the Veterans' Administration, of Miss Mame E. Howell, Louisville, Ky., as the sole beneficiary entitled to payment of the amount of \$4,954.85 in the civil-service retirement and disability fund to the credit of the said Lucy Howell Netherton, shall be held and considered to be, and at all times on and after April 2, 1940, to have been in full force and effect.

The facts in connection with this claim are fully set forth in report from the United States Civil Service Commission to the chairman of the committee, dated March 3, 1958. Subsequent to the date of this report, evidence has been furnished to the committee to the effect that Miss Howell is the sole beneficiary of Lucy Howell Netherton, and affidavits have been submitted to confirm that she is entitled to the proceeds of the funds now held by the Civil Service Commission to the credit of Mrs. Netherton. With this evidence the Commission has no objection to the enactment of the bill.

Therefore, your committee recommends favorable consideration of the bill.

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D. C., March 3, 1958.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, House Office Building.*

DEAR MR. CELLER: This refers further to your letter of June 13, 1957, concerning H. R. 8088, a bill for the relief of Miss Mame E. Howell.

Mrs. Lucy Howell Netherton, former Veterans' Administration employee, died August 5, 1956, leaving the sum of \$4,954.85 to her credit in the civil service retirement fund. This amount is payable as a final lump-sum death benefit under the Civil Service Retirement Act. To date no award of such benefit has been made.

H. R. 8088 proposes that this lump sum be awarded to Miss Mame E. Howell, as sole beneficiary under the terms of a Retirement Act designation of beneficiary said to have been made by the deceased on April 2, 1940.

We have no designation of April 2, 1940, by Mrs. Netherton. Any such designation by her was voided by operation of an amendment to the Retirement Act, approved June 14, 1950, and effective October 1, 1950. This amendment established a new order of payment for lump-sum death benefits. It also provided that all designations of beneficiary received in this Commission before September 1, 1950, were null and void, except where an application for benefits based on the death of the designator was received in the Commission before January 2, 1951. As was the legislative intent, this amendment made obsolete and available for disposal an existing file of some 5 million designations. The original of any 1940 designation by Mrs. Netherton was thus voided and disposed of many years before her death.

The act of June 14, 1950, became the subject of judicial challenge in the case of *Rafferty v. United States*, but was upheld on February 16, 1954, by the United States Court of Appeals for the Third Circuit (210 F. 2d 934).

Although the retirement law authorized her to do so, there is no record of Mrs. Netherton having filed any subsequent designation of beneficiary. Her retirement money is thus payable under the remaining order of precedence stipulated by the law, which is as follows:

1. Surviving spouse.
2. Descendants.
3. Parents or parent.
4. Executor or administrator of estate.
5. Other next of kin.

The only claim filed for benefits in the case is that of Miss Mame E. Howell, sister of the deceased, and administratrix of her estate. Miss Howell indicated her sister was survived by 5 blood relatives: herself, a brother, 2 nieces and a nephew. She further indicated that her sister had been married to one John Y. Netherton, from whom she had been separated for 25 years prior to death.

Miss Howell has been asked to prove, if such was the fact, that her sister was not survived by a husband. She has been unable to do so. Although a year and a half has elapsed since the death of Mrs. Netherton and no claim from a widower has been forthcoming, the situation is such that no settlement in the case may properly be made with anyone.

The law vested title to the payment in the widower if one survived. It is admitted that one may have survived. Yet no claim from a widower has been received. A stalemate therefore exists which could, if it persists, result in virtual forfeiture of the death benefit to the retirement fund, a development definitely not contemplated by the Retirement Act.

It is in these circumstances that H. R. 8088 proposes to consider Mrs. Netherton's voided 1940 designation of beneficiary as still in full force and effect and directs payment to Miss Howell as sole beneficiary under its apparent terms. A duplicate copy of any designation filed has always been returned to each designator under the Retirement Act. Evidently such duplicate of the 1940 designation has been preserved in this case, although it has never been exhibited to us, and the bill bases its proposal to pay Miss Howell on the disposition indicated therein.

In assessing this proposal, the Commission has taken into consideration the following points:

1. That the settlement provided in the bill is at variance with the applicable provisions of the Retirement Act. Upon proof that the deceased employee was not survived by a husband, Miss Howell could establish entitlement to all or part of the benefit due (as administratrix, or if the estate were closed, as one of Mrs. Netherton's heirs), but such entitlement under the act could never be on the basis of sole beneficiary.

2. That, on the other hand, a situation exists whereby the benefit due might, in effect, be forfeited to the retirement fund; a result unintended by the retirement law.

3. That while payment as proposed would not be in accord with the act's provisions, it would not operate as a precedent of any sort, nor interfere with the orderly administration of the act generally.

4. That although Mrs. Netherton did not leave a designation in force naming her sister beneficiary for her retirement fund, she did name Miss Howell as beneficiary for the \$1,250 insurance she had under the Federal Employees' Group Life Insurance Act of 1954.

Accordingly, if your committee should conclude that of the several survivors of Mrs. Netherton, Miss Howell is the person who equitably should be paid the total to decedent's credit in the retirement fund, the Commission under all the circumstances would offer no objection to the enactment of this bill.

The Bureau of the Budget advises there would be no objection to the submission of this report to your committee.

By direction of the Commission:

Sincerely yours,

HARRIS ELLSWORTH, *Chairman.*

AFFIDAVIT

After my death I want my sister, Mame E. Howell to have any money I have in the bank and every thing else I possess—

LUCY H. NETHERTON.

June 12, 1944.

Witnessed this 12th day of June, 1944.

LORNA V. KLEER.
MARY M. AUXIER.

STATE OF KENTUCKY

At a County Court held for Jefferson County at Court House in City of Louisville on August 14th, 1956, was produced in Court the foregoing instrument of writing purporting to be the last will and testament of Lucy H. Netherton deceased, late of this County, who died August 5th, 1956, resident thereof; and same was proven to be in handwriting of and wholly written by said testatrix by testimony of Jane Howell Fleming and G. Travis Howell; whereupon same was established and adjudged by the Court to be the last will and testament of said testatrix and ordered to be recorded as such; and I hereby certify that same is recorded in my office as Clerk of said Court.

Witness my hand this August 14th, 1956.

JAMES V. QUEENAN, *Clerk.*
By CARLOS RUSSMAN, D. C.

I, James F. Queenan, clerk of the Jefferson County Court, Kentucky, do hereby certify that the foregoing contains a full, true and correct copy as taken from and compared with the original records in my office of which I am legal custodian, of last will and testament and codicils thereto, and certificate of probate thereof, of Lucy H. Netherton, deceased, late of this county, and I further certify that said will is duly recorded in Will Book 92 at page 76.

Witness my hand this 2d day of April, 1958.

JAMES F. QUEENAN, *Clerk.*
By K. ROTHGERBER, D. C.

STATE OF KENTUCKY,
County of Jefferson:

The affiant, Jane Howell Fleming, states that she is a niece of Lucy Howell Netherton, deceased, and that she does hereby assign any interest she may have in the civil service retirement fund by reason of being an heir of Lucy Howell Netherton, deceased, to Mame E. Howell.

JANE HOWELL FLEMING.

Subscribed and sworn to before me by Jane Howell Fleming this 15th day of March 1958.

My commission expires November 15, 1959.

[SEAL]

AVIS L. GRABLE,
Notary Public, Jefferson County, Ky.

STATE OF MARYLAND,
County of Howard.

The affiant, George S. Howell, states that he is a nephew of Lucy Howell Netherton, deceased, and that he does hereby assign any interest he may have in the civil service retirement fund by reason of being an heir of Lucy Howell Netherton, deceased, to Mame E. Howell.

GEORGE S. HOWELL.

Subscribed and sworn to before me by George S. Howell, this 21st day of March 1958.

My commission expires May 4, 1959.

[SEAL]

CHARLES W. MILES, Sr.,
Notary Public, Howard County, Md.

STATE OF OHIO,
County of Hamilton

The affiant, Martha Howell McCarthy, states that she is a niece of Lucy Howell Netherton, deceased, and that she does hereby assign any interest she may have in the civil service retirement fund by reason of being an heir of Lucy Howell Netherton, deceased, to Mame E. Howell.

MARTHA HOWELL MCCARTHY.

Subscribed and sworn to before me by Martha Howell McCarthy, this 18th day of March 1958.

My commission expires ———.

PETER J. MCCARTHY, Jr.,
Notary Public, Hamilton County, Ohio.

THE STATE OF OHIO,
County of Hamilton, ss:

I, Elmer F. Hunsicker, clerk of the Common Pleas Court, the same being a court of record of the aforesaid county, having by law a seal do hereby certify that Peter J. McCarthy, Jr., Esq., whose name is subscribed to the attached certificate of acknowledgement, proof or affidavit, was at the time of taking said acknowledgement, proof or affidavit a notary public duly commissioned and sworn and residing in said county, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgement of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature. I further certify that the filing of the impression of the notary seal is not required in this State.

In witness whereof, I have hereunto set my hand and affixed my official seal this 19th day of March 1958.

[SEAL]

ELMER F. HUNSICKER.

Clerk of Common Pleas Court, Hamilton County, Ohio

STATE OF KENTUCKY,
County of Jefferson.

The affiant, G. Travis Howell, states that he is a brother of Lucy Howell Netherton, deceased, and that he does hereby assign any interest he may have in the civil service retirement fund by reason of being an heir of Lucy Howell Netherton, deceased, to Mame E. Howell.

G. TRAVIS HOWELL.

Subscribed and sworn to before me by G. Travis Howell, this 18th day of March 1958.

My comission expires November 15, 1959.

[SEAL]

AVIS L. GRABLE,
Notary Public, Jefferson County, Ky.

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